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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re K.S., a Person Coming Under the Juvenile  
Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

HEATHER E.,

Defendant and Appellant.

F071807

(Super. Ct. No. 15CEJ300040)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Brian M. Arax, Judge.

Michele Anne Cella, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and David F. Rodriguez, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Franson, J. and Peña, J.

A mother with a long history of drug abuse and mental health issues argues the juvenile court erred when it refused to place her child with her because she had completed a short period of sobriety. Heather E. (mother) argues there was insufficient evidence K.S. (child) would be at serious risk of physical harm because she had spent nearly three months in an inpatient treatment facility before the disposition hearing and had been progressing well in that program, and had a high level of support in that program for any issues that may occur with the child while in her custody.

Because this argument ignores the previous 10 years of mother's life, a period filled with alcohol and drug abuse as well as serious mental health issues, we must affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

The February 2015 detention report indicated the Fresno County Department of Children and Family Services (the Department) became involved with the case when mother repeatedly tested positive for marijuana and methamphetamine both during her pregnancy and after the child's birth in May 2014. In addition, mother did not have stable housing in which she could care for the child. Father also had a history of drug use, although when he spoke with the Department's representative he reported he had not used illegal substances for two weeks. Continued detention was required because of concerns that mother would continue abusing illegal drugs while caring for the child resulting in a substantial danger to the physical health of the child.

The Department's involvement occurred in February 2015 when the Fresno Police Department placed a hold for child placement because mother had been observed holding drug paraphernalia and using methamphetamine. In addition, mother did not have stable housing. Mother admitted to the officers she had used methamphetamine the day before the Department's intervention, and had been using methamphetamine since she was 13 years old. (Mother was 23 years old at the time of detention.) Mother had been diagnosed as bipolar in the past, but had not taken the prescribed medications for several

years. Mother also admitted using methamphetamine during her pregnancy, and she tested positive for both methamphetamine and marijuana at or near the time of birth. Mother was removed for a Welfare and Institutions Code section 5150 evaluation because of her “extreme range of emotions” during her interview with the Department representative. Mother was later placed under arrest as the result of a felony arrest warrant, an issue which was apparently quickly resolved.

A petition for dependency was filed by the Department on February 13, 2015. On April 17, 2015, mother submitted to the jurisdiction of the juvenile court based on the first amended petition filed by the Department in open court. As pertinent here, the first amended petition alleged the child came within the jurisdiction of the juvenile court pursuant to the provisions of Welfare and Institutions Code section 300, subdivision (b)(1) because the child had suffered, or there was a substantial risk the child would suffer serious physical harm or illness as a result of mother’s inability to supervise or protect the child adequately, and because mother could not provide regular care for the child due to her mental illness and/or substance abuse. The factual allegations of the petition alleged that mother abused both methamphetamine and marijuana, and this abuse negatively affected her ability to provide regular care, supervision, and protection for the child. Mother admitted to marijuana and methamphetamine use during her pregnancy and after the birth of the child, and also did not have stable housing for the child. The report noted the child, who was not yet one year old, required a clean and sober parent to provide him care, and because mother was not clean and sober, the child was at risk of harm or illness if left in mother’s care.

The jurisdiction report filed on April 17, 2015, indicated the Department had referred mother for parenting classes, substance abuse evaluation and treatment, mental health evaluation and treatment, and ordered random drug testing. At the time, mother was on a waiting list for a parenting class, but had not yet had a mental health assessment. Mother had enrolled in her first inpatient treatment for substance abuse at

Spirit of Women on February 25, 2015. However, on March 12, mother self-discharged her treatment at Spirit of Women because it was learned she had brought in methamphetamine for another inpatient client. Mother did not test positive for any illegal substance on the following day.

Mother's visits with the child were progressing well with proper interaction between mother and child. Mother did have a long history with the Fresno Police Department, but all were for minor matters and it did not appear any contact resulted in a conviction.

The contested disposition hearing was held on June 16, 2015. Mother testified at the hearing that since March 25, she had been residing at a treatment facility known as WestCare. At this time she was asking for the child to be placed with her. Mother explained that she had been at the facility for "several months" and had been doing well in the program. She had received an award for outstanding parenting with other children. She felt it was important that she bond with her child as soon as possible. Documentation was also provided to establish mother's progress in the program, including her drug test results which did not show any detectable levels of illegal drugs. Mother also explained the child had numerous food allergies. Mother understood these allergies and felt confident she could manage the situation.

Mother's counselors at WestCare approved of her child coming to the program with her. Mother had completed the substance abuse part of the program, and had graduated to phase three. She now assisted the new participants in transitioning to the program. She expressed a willingness to stay at WestCare with her son, as well as abiding by all orders of the court. She planned on staying at WestCare for as long as possible. At the end of the program, WestCare provides help with housing, and provides aftercare programs to assist their graduates. WestCare also provides both emotional and practical support for the women staying there. They teach the women how to be self-sufficient and some of the skills they will need when on their own.

She had been diagnosed with depression, and was receiving mental health counseling once a week. Mother was concerned about her child's food allergies if he was placed with her because she cannot be with him all of the time since she has other program obligations. However, she felt she had made suitable arrangements to care for him that would avoid any problems.

When asked to expand on the reasons she wanted custody of her child, mother explained her son was growing very fast and she wanted to participate in his life fully. Mother also admitted she is on good terms with father, and if he completes a substance abuse program and remains sober she would like to share her life with him.

The social worker for the Department, Larisa Borshch, affirmed the opinions and information contained in her report. When asked why the child had not been placed with mother, Borshch explained mother had been doing well, but she just started her mental health program and had not yet completed her parenting classes. Borshch had some concerns about whether mother was able at this time to care for the child full time. She was concerned that if mother had custody she may not be able to thrive in the program as she has done so far. Borshch also expressed concern about mother's ability to meet all of the child's needs. Mother still struggles with extreme emotional swings, although she is making progress in controlling them. One assessor at WestCare also expressed that it was important for mother to be able to care for her own emotions before gaining custody of the child. Borshch confirmed mother had just begun her individual mental health therapy.

Borshch also explained that mother was scheduled for an exit staffing the following day since she had completed the 90-day program, although it was anticipated she would remain at WestCare.

The juvenile court complimented mother on her success and expressed hope she would continue to do well. However, it did not feel at that time mother was ready for full-time custody of the child, so it ordered the child placed in foster care. It noted that

mother's expressed desire to reunite with father demonstrated questionable judgment considering his drug, criminal, and gang history. The juvenile court also noted mother's long history of drug and alcohol abuse, as well as her mental health issues. Although mother had been making good progress, considering the length of her drug abuse history, she had barely begun her recovery. It also noted that mother just began her mental health treatment which was one of the primary components of the program. Mother's failure at the Spirit of Women program caused concerns about her current ability to care for a child. The assessor's belief that mother was not ready to care for the child also supported the juvenile court's conclusions. Finally, the juvenile court noted mother was scheduled to be released the following day and she did not have any suitable place to live for herself or her child.

## **DISCUSSION**

Welfare and Institutions Code section 361, subdivision (c) provides that a child shall not be taken from the physical custody of a parent who had custody of that child when the dependency petition was filed unless "the juvenile court finds clear and convincing evidence of" any of the circumstances listed in that section. The Department and the juvenile court relied on subdivision (c)(1) which provides removal is appropriate if clear and convincing evidence establishes "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (Welf. & Inst. Code, § 361, subd. (c)(1).)

Mother argues there was insufficient evidence to support the conclusion that either (1) there was substantial danger to the physical health, safety, protection or physical or emotional well-being of the child, or (2) there were no reasonable means to protect the minor without removing him from mother's physical custody. Mother asserts the juvenile court failed to make any finding on the second issue. Mother also places great

reliance on the assertion that we must evaluate the evidence while keeping in mind the clear and convincing evidence standard. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

“We review the juvenile court’s jurisdictional findings and disposition orders for substantial evidence. [Citations.] ‘Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value.’ [Citation.] Conflicts in the evidence are resolved and reasonable inferences are made in favor of the prevailing party. [Citation.] Although substantial evidence may consist of inferences, the inferences must be logical and supported by evidence, and not the product of speculation or conjecture. [Citation.] ‘[I]ssues of fact and credibility are questions for the trier of fact.’ [Citation.] The juvenile court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]” (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80.)

Mother’s argument focuses on her behavior and accomplishments while she was in the in-patient program at WestCare. And if our review was limited to the 90 days before the dispositional hearing, her argument might have merit. However, we review the whole record, including mother’s 10-year history of substance and alcohol abuse, and her history of mental health issues. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496.) It would be improper not to do so.

This is not to say that mother cannot overcome her past. The juvenile court’s task is to determine whether the work and effort made by mother at the time of the hearing was sufficient to overcome her 10-year history of substance abuse and mental health issues. And, in this case, that history was significant. Mother admitted to a lengthy history of polysubstance abuse, admitted to using both methamphetamine and marijuana while pregnant, acknowledged that she was using methamphetamine days before the Department intervened, and admitted to not having stable housing in which to raise the

child. Mother also admitted to being diagnosed as both bipolar and depressed, and admitted to not taking the medication prescribed for her illness.

In addition to mother's admissions, the testimony at the dispositional hearing provided further support for the juvenile court's order. Mother was assessed while receiving treatment, and the person performing the assessment also felt that mother was not ready to assume full-time care for the child because her mental health issues had not been treated. The Department's social worker concurred with this assessment. There was no evidence that mother had made any arrangements for living with her child except for staying at WestCare. If this option was not available mother could not provide stable housing for the child.

Mother's actions even after she began receiving treatment also provide support for the juvenile court's order. Mother terminated her first program because she was caught buying methamphetamine for another program participant. The decision to make such a purchase demonstrates very poor judgment. Her poor judgment was again demonstrated when she testified at the hearing that if father was sober she would like to reunite with him. Father's history, which includes numerous criminal convictions, a history of substance abuse, and membership in a criminal street gang, was apparently unknown to mother and raises serious questions about his ability to be either a companion or a father. Mother's willingness to undertake a relationship with him without knowing his past and on such vague terms demonstrated poor judgment.

We are not suggesting that mother's progress was unworthy of consideration by the juvenile court. In fact, the opposite is true. The juvenile court should, and did, take her progress into consideration when making its ruling. However, the juvenile court's conclusion that this short period of sobriety did not overcome her lengthy history of substance abuse and mental illness were well within the bounds of reason and supported by substantial evidence.



Mother's second argument is there was insufficient evidence to support that there were no reasonable means for protecting the minor without removing the minor from the custody of the parent. Mother suggests that because she was an inpatient at WestCare, the facilities employees and other patients would assist mother with caring for the child if any issues arose, and this would have been a reasonable means to prevent removal of the child from mother's custody. The Department's failure to contact WestCare to confirm its willingness to take on this additional obligation established that it failed to investigate to determine if there were reasonable means to protect the child while awarding mother custody.

We reject this argument because it is based entirely on the assumption that mother would remain at WestCare indefinitely, and WestCare would be willing to undertake these additional obligations indefinitely. Mother's suggestion was not a reasonable means for protecting the minor because, even in the unlikely event WestCare agreed to ensure the child's safety, mother was not obligated to stay at WestCare. This was not a locked facility, and mother could have left at any time with the child, even over the objection of the WestCare staff. If mother chose to leave the facility, or was compelled to leave the facility because her program ended or there was not adequate bed space, WestCare would not be able to monitor mother's activities (i.e. drug use) or mother's care for the child. It would have been an abuse of the juvenile court's discretion to find that under these circumstances WestCare could protect the child.

The record in this case provides substantial evidence that, because of mother's drug abuse history and mental health issues, the only way to protect the minor was to remove the child from mother's custody; and there were no reasonable alternatives to removing the minor from mother's custody. While the juvenile court may have erred by failing to make the required findings, the error was harmless because the record contains substantial evidence that there were no reasonable means for protecting the minor other

than removal from mother's custody. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 295.)

### **DISPOSITION**

The order after the disposition is affirmed.